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4 UNITED STATES DISTRICT COURT  
5 WESTERN DISTRICT OF WASHINGTON  
6 AT TACOMA

7 LISA EARL, et al.,

8 Plaintiffs,

9 v.

10 SCOTT CAMPBELL, et al.,

11 Defendants.

CASE NO. C17-5315 BHS

ORDER GRANTING PLAINTIFFS'  
MOTION TO REOPEN  
DISCOVERY

12 This matter comes before the Court on Plaintiffs Lisa Earl, I.B., K.S., K.W., O.B.,  
13 and the Estate of Jacqueline Salyers's ("Plaintiffs") motion to reopen discovery. Dkt. 48.  
14 The Court has considered the pleadings filed in support of and in opposition to the  
15 motion and the remainder of the file and hereby grants the motion for the reasons stated  
16 herein.

17 **I. PROCEDURAL AND FACTUAL BACKGROUND**

18 On April 28, 2017, Plaintiffs filed a complaint against Defendants Scott Campbell  
19 ("Campbell") and the City of Tacoma (collectively "Defendants") asserting claims based  
20 on Campbell's deadly shooting of Jacqueline Salyers. Dkt. 1.

21 On August 9, 2017, the Court issued a scheduling order setting the discovery  
22 deadline as July 2, 2018, and trial for October 30, 2018. Dkt. 13.

1 On September 13, 2018, Plaintiffs filed the instant motion to reopen discovery and  
2 to strike the remaining deadlines and trial date. Dkt. 48. After a response from  
3 Defendants, the Court struck the remaining deadlines and trial date. Dkt. 67. On  
4 September 25, 2018, Defendants responded to Plaintiffs' request to reopen discovery.  
5 Dkt. 64. On September 29, 2018, Plaintiffs replied. Dkt. 69.

## 6 II. DISCUSSION

7 The Court may modify a scheduling order where there is "good cause." Fed. R.  
8 Civ. P. 16(b)(4). In determining whether a motion to reopen discovery satisfies this  
9 "good cause" requirement, a court should consider the following factors:

10 1) whether trial is imminent, 2) whether the request is opposed, 3) whether  
11 the non-moving party would be prejudiced, 4) whether the moving party  
12 was diligent in obtaining discovery within the guidelines established by the  
13 court, 5) the foreseeability of the need for additional discovery in light of  
14 the time allowed for discovery by the district court, and 6) the likelihood  
15 that the discovery will lead to relevant evidence.

16 *U.S. ex rel. Schumer v. Hughes Aircraft Co.*, 63 F.3d 1512, 1526 (9th Cir. 1995), *vacated*,  
17 520 U.S. 939 (1997) (citing *Smith v. United States*, 834 F.2d 166, 169 (10th Cir. 1987)).

18 In this case, two of the four factors are relevant to the instant motion. First,  
19 Defendants argue that Plaintiffs "had ample opportunity to conduct discovery in this  
20 matter and their failure to take certain depositions during the discovery period is not good  
21 cause to reopen discovery." Dkt. 64 at 1. Plaintiffs counter that "[w]hen there is no  
22 reason to investigate certain facts, the failure to investigate does not constitute a lack of  
diligence." Dkt. 69 at 3 (citing *2910 Georgia Ave. LLC v. District of Columbia*, 312  
F.R.D. 205, 209–11 (D.D.C. 2015)). The Court agrees with Plaintiffs because

1 Defendants' discovery responses were, at the very least, confusing. Defendants stated  
2 that only two people had administrative access to the video camera, and, since neither of  
3 those people could have accessed the camera to potentially delete footage of the shooting,  
4 Plaintiffs did not investigate the issue further. *See* Dkt. 69 at 3–4. Plaintiffs assert that,  
5 after discovery closed, they learned that one of the individuals with administrative access  
6 gave the password to another officer the night of the shooting, which gave Plaintiffs  
7 reason to investigate the issue further. *Id.* The Court finds that Plaintiffs' assertions are  
8 plausible and undermine any argument relating to a lack of diligence. Thus, this factor  
9 weighs in favor of reopening discovery.

10 Second, the Court should consider the likelihood that the discovery will lead to  
11 relevant evidence. Defendants argue that Plaintiffs "have not articulated why the  
12 additional discovery they seek would change the court's analysis on the pending motion  
13 for summary judgment." Dkt. 64 at 6. The Court agrees to the extent that Plaintiffs have  
14 failed to address the issue of relevance. The Court, however, disagrees that this failure  
15 warrants denial of Plaintiffs' motion because the Court "has the inherent authority to  
16 impose sanctions based on a party's failure to preserve relevant evidence." *U.S. ex rel.*  
17 *Berglund v. Boeing Co.*, 835 F. Supp. 2d 1020, 1049 (D. Or. 2011). "A wide range of  
18 sanctions is available because spoliation encompasses a wide range of behaviors." *Leon*  
19 *v. IDX Sys. Corp.*, C03-1158MJP, 2004 WL 5571412, at \*5 (W.D. Wash. Sept. 30, 2004),  
20 *aff'd*, 464 F.3d 951 (9th Cir. 2006) (citing *Henderson v. Tyrell*, 80 Wn. App. 592, 605  
21 (1996)). "The Court may exclude certain evidence at trial, direct that an adverse  
22 inference instruction against the spoliator be given to the jury, fine or demand monetary

1 sanctions from the spoliator, or dismiss a complaint or enter a default judgment against  
2 the spoliator.” *Id.* It is undisputed that a video of the shooting would be relevant no  
3 matter what the video showed. In turn, the destruction of that evidence could possibly  
4 result in a wide range of sanctions, including the entry of default judgment. Under these  
5 authorities, the Court finds additional discovery could uncover not only relevant  
6 evidence, but also evidence that could possibly support a finding of spoliation.  
7 Therefore, the Court concludes that this factor weighs in favor of reopening discovery,  
8 and the Court grants Plaintiffs’ motion.

9 The final issue is scheduling. Plaintiffs request 90 days of additional discovery,  
10 but the Court finds that five weeks should be sufficient. Thus, the Court sets a discovery  
11 deadline of November 9, 2018. A supplemental response to Defendants’ motion for  
12 summary judgment may be filed no later than November 23, 2018. Defendants may file  
13 a supplemental reply no later than November 30, 2018, and the Clerk shall renote all of  
14 the pending motions for consideration on the Court’s November 30, 2018 calendar.

### 15 III. ORDER

16 Therefore, it is hereby **ORDERED** that Plaintiffs’ motion to reopen discovery,  
17 Dkt. 48, is **GRANTED** as set forth herein.

18 Dated this 4th day of October, 2018.

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BENJAMIN H. SETTLE  
United States District Judge